

IN THE COURT OF APPEALS OF IOWA

No. 1-539 / 11-0294
Filed August 10, 2011

**IN RE THE MARRIAGE OF BRUCE LEE CATCHPOOL
AND THERESA ANN CATCHPOOL**

**Upon the Petition of
BRUCE LEE CATCHPOOL,**
Petitioner-Appellant,

**And Concerning
THERESA ANN CATCHPOOL,**
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge.

Bruce Catchpool appeals from physical care provision of the parties' dissolution decree. **AFFIRMED.**

John J. Hines of Dutton, Braun, Staack, Hellman, P.L.C., Waterloo, for appellant.

Teresa A. Rastede of Dunakey & Klatt, P.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

Bruce Catchpool appeals the physical care provision of the parties' dissolution decree, in which the district court awarded primary physical care of the parties' ten-year-old daughter to Theresa Catchpool. Bruce argues that he is better able to provide for the long-term best interests of the child and should be designated her primary physical caretaker. Upon our review, we find both parents play an active role in the child's life, share a close bond with her, and are more than capable of fulfilling her daily needs. Although the issue of primary physical care is close, we find the child's long-term best interests to be more effectively ministered by primary physical placement with Theresa. We therefore affirm the ruling of the district court.

I. Background Facts and Proceedings.

Bruce and Theresa Catchpool were married in September 1999. They had one child together in December 1999. The family moved into a newly-constructed home in Cedar Falls in March 2000. Prior to that time, they had inhabited Bruce's parent's home in Cedar Falls while his parents were away in Arizona for the winter.

The parties agreed the child would attend daycare when Theresa went back to work when the child was eight-weeks-old. Theresa has been employed by Altria, formerly Phillip Morris, a sales representative for tobacco products since 1990. Bruce's employment has been primarily in the field of electrical sales. He has worked for Echo Automation and Control for the past four years and has been the manager of the Cedar Falls branch for over two years.

Bruce and Theresa both play an active role in the child's life. The child does well in school and is involved in many activities, including arts and crafts, playing instruments, social times with friends, and family get-togethers. In 2007, the child began practicing and competing in gymnastics. Her gymnastic routine consists of practice three to four nights each week and meets every other weekend in the fall and winter months. Bruce is the parent primarily involved in the child's gymnastics, and he has taken on a leadership/volunteer role at the gymnastic club. Theresa is more involved with arts and crafts, shopping, and schoolwork with the child. Theresa's work schedule is flexible and has allowed her to be with the child in the morning, take her to school, and pick her up. She arranges the child's doctor's appointments, registers her for school, and when the child was younger, selected daycare services. Theresa also cleans the home and provides most of the meals.

Bruce filed for divorce in November 2009. Although the parties had not gotten along well for years, the situation became more tumultuous when Bruce, Theresa, and the child remained in the marital home together during the dissolution proceedings. Bruce and Theresa behaved "miserably" at times. Bruce displayed a bad temper, was controlling of the child, and tried to keep the child away from Theresa. Theresa made untrue statements to other individuals about Bruce. Each party, at times, took and hid property belonging to the other.

The dissolution trial was held over two days in December 2010, and the court entered its decree several weeks later. The court observed that the parties' decision to live together after the filing of the dissolution put a significant strain on their relationship. The court noted that although the turmoil was limited to the

parents for the most part, the child was affected by some of their actions and behaviors. However, the district court found both Bruce and Theresa are good parents and are more than capable of meeting the child's daily needs.

Ultimately, the court awarded Theresa primary physical care of the child.

In reaching its decision, the court explained:

The evidence shows Theresa is in the best position as she has not prevented or otherwise significantly hindered Bruce's relationship with the child. Although Bruce has been supportive of the relationship between Theresa and the child, it is begrudgingly. . . . Bruce is very active in the child's life and has a very important role; however, on a day-to-day basis Theresa has been the major provider of daily maintenance over the years. Theresa is in the best position to communicate with Bruce as he has, at times, tried to keep Theresa out of the loop.

The district court set forth a liberal visitation schedule for Bruce that included overnights every Wednesday, overnights every other weekend, and five weeks of summer visitation. Bruce now appeals the physical care provision of the dissolution decree.

II. Standard of Review.

Review of a dissolution case is de novo. *In re Marriage of Hansen*, 733 N.W.2d 683, 690 (Iowa 2007). We are not bound by the district court's findings of facts, but we give them deference because the district court has a firsthand opportunity to view the demeanor of the parents and evaluate them as custodians. Iowa R. App. P. 6.904(3)(g); *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004); see *In re Marriage of Witten*, 672 N.W.2d 768, 778 (Iowa 2003). Decisions are primarily based on the circumstances of the parties in the case, so precedent is of little value. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

III. Physical Care.

Bruce argues he is better able to provide for the child's long-term best interests and that he should be designated the child's primary physical caretaker. He states he has consistently been there for the child and has assumed a far greater parental role over the years, whereas Theresa only began spending more time with the child after the dissolution petition was filed.

The primary consideration in determining the placement of a child is his or her long-term best interests. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). The court is guided by the factors set forth in Iowa Code section 598.41(3) (2009), see *In re Marriage of Hansen*, 733 N.W.2d 683, 696 (Iowa 2007) (stating the custodial factors in section 598.41(3) apply equally to physical care determinations), as well as those identified in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). The court is to consider "the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement." Iowa Code § 598.41(1)(c) (2009); see also *In re Marriage of Shanklin*, 484 N.W.2d 618, 619 (Iowa App. 1992) ("In reaching our decision we must consider which parent will encourage the most contact between the noncustodial parent and the child."). "Gender of the respective parents is irrelevant." *Murphy*, 592 N.W.2d at 683. The ultimate objective is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *Hansen*, 733 N.W.2d at 695. With these principles in mind, we conclude the district court was correct in placing the child's physical care with Theresa.

As the district court recognized, despite their problems with each other, both parents have remained committed to their respective relationships with the child. It is clear both parties love the child, share a close bond with her, and are more than capable of fulfilling her daily needs. The court also observed that Bruce and Theresa have shared in the child's upbringing and are capable of providing a safe, healthy environment for her.

However, the court found the scales tipped in favor of Theresa primarily based on testimony regarding Bruce's poor communication and Theresa's ability to encourage a loving and healthy relationship between Bruce and the child. As the court observed, "Theresa fears that Bruce will hinder her communication and visitation with the child if he is the custodial parent. The evidence shows that Bruce has exerted more effort in limiting time with the other parent." The court also cited testimony regarding Bruce's issues with control and anger to validate the finding that Theresa would likely provide a better environment in the child's long-term best interests. As the court stated, "Theresa's overall levelheadedness appears to be in the best interests of the child. Bruce has had flashes of anger and temper." The district court also concluded:

The court's concerns about Bruce's behavior in front of and concerning the child's needs show that Theresa is, overall, a better candidate to properly administer the role of custodial parent. Neither parent is a bad parent. The child is lucky to have such good parents. However . . . it is the court's view that from an overall perspective Theresa will be better suited to effectively fulfill her role.

We recognize that the stress during the dissolution proceedings particularly when the parties continue to reside in the same house must be viewed in that light. The better picture "can be found by viewing the total

circumstances.” *In re Marriage of Ihle*, 577 N.W.2d 64, 69 (Iowa 1998). Although Bruce succumbed to the stress at times, we are also not favorably impressed by Theresa’s act of recording approximately 10,000 hours of conversations in the home and her false or embellished statements to others about Bruce.

However, we give considerable deference to the district court’s credibility findings and weight of the evidence determination, as the district court had the benefit of hearing and observing the parties firsthand. *See id.*; *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997). In close cases, we give careful consideration to the district court’s findings. *In re Marriage of Wilson*, 532 N.W.2d 493, 495-96 (Iowa Ct. App. 1995). And there is good reason for us to pay very close attention to the court’s assessment of the credibility of witnesses.

A trial court deciding dissolution cases “is greatly helped in making a wise decision about the parties by listening to them and watching them in person.” In contrast, appellate courts must rely on the printed record in evaluating the evidence. We are denied the impression created by the demeanor of each and every witness as the testimony is presented.

In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984) (internal citations omitted). A witness’s facial expressions, vocal intonation, eye movement, gestures, posture, body language, and courtroom conduct, both on and off the stand, are not reflected in the transcript. Hidden attitudes, feelings, and opinions may be detected from this “nonverbal leakage.” Thomas Sannito & Peter J. McGovern, *Courtroom Psychology for Trial Lawyers* 1 (1985). Thus, the trial judge is in the best position to assess a witness’s interest in the trial, their motive, candor, bias, and prejudice.

After considering the parties' arguments on appeal and reviewing the evidence anew, we find Bruce and Theresa are both capable of providing for their child's long-range best interests. The court had the opportunity to consider the evidence, view the parties, and reach its conclusion. We accordingly affirm the court's decision to place physical care of the child with Theresa.

IV. Appellate Attorney Fees.

Theresa seeks an award of appellate attorney fees. We enjoy broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). In exercising this discretion, we consider several factors: the financial needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* We decline to award appellate attorney fees to Theresa.

Costs of this appeal are taxed to Bruce.

AFFIRMED.